# INDEX TO PETITION.

## SUBJECT INDEX.


| | PAGE |
|---|---|
| QUESTION PRESENTED | 1 |
| SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED | 2 |
| REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT | 3 |
| PRAYER FOR WRIT | 9 |


## TABLE OF CASES CITED.


| | |
|---|---|
| Brecher, In re, 4 F. (2) 1001 | 8 |
| Corcoran, In re, 4 Fed. Supp. 988 | 5 |
| Davis *v.* Wechsler, 263 U. S. 22, 24 | 9 |
| Ferguson *v.* District of Columbia, 270 U. S. 633, 634 | 5 |
| Hodges, In re, 4 Fed. Supp. 804 | 5 |
| Lerner, In re, 70 F. (2) 938 | 3 |
| Levin, In re, 176 Fed. 177 | 9 |
| McIntosh *v.* Seymour, 292 U. S. 652 | 4, 5 |
| Morgan, In re, 101 Fed. 982 | 9 |
| Nathanson, In re, 152 Fed. 585 | 9 |
| Pokora *v.* Wabash Ry. Co., 292 U. S. 98, 105 | 9 |
| Rerat *v.* Fisk Tire, Inc., 28 F. (2) 607 | 8 |

PAGE

Schlesinger *v.* Phillips, 36 F. (2) 191 ..... 8
Stiebel & Sons, In re, 40 F. (2) 637 ..... 8

United States *v.* Factors & Finance Co., 288 U. S. 89, 93 ..... 9
United States *v.* Memphis Cotton Oil Co., 288 U. S. 62, 68 ..... 9
United Wall Paper Factories *v.* Hodges, 70 F. (2) 243 ..... 5

---

TABLE OF STATUTES AND GENERAL ORDERS CITED.

Bankruptcy Act, Sec. 2 ..... 8
Sec. 2 (15) ..... 8
Sec. 14(b) ..... 8
General Order XXXII ..... passim
General Order XXXVII ..... 8

---

OTHER AUTHORITIES CITED.

Attorney General's Report on Bankruptcy Law and Practice (Sen. Doc. No. 65, 72d Congress, 1st Session) ..... 6, 7
"Donovan" Report on Administration of Bankrupt Estates (House Committee Print, 71st Congress, 3rd Session) ..... 6, 7
Remington on Bankruptcy, 4th Ed. Vol. 7, Sec. 3201, p. 427 (1934) ..... 7

# Supreme Court of the United States,

OCTOBER TERM, 1934.

---

No. .

---

LAWYERS COUNTY TRUST COMPANY,

*Petitioner,*

*v.*

WILLIAM REICHERT and PAUL KOLLMAR, individually and as co-partners trading under the name of W. REICHERT & Co., Bankrupts.

---

MAY IT PLEASE THE COURT:

The petition of the Lawyers County Trust Company respectfully shows to this Honorable Court:

## Question Presented.

April 17, 1933, this Court amended General Order XXXII in Bankruptcy (288 U. S. 619, 632). The scope of the amendment is shown by the following text of the order, in which the language deleted by the 1933 amendment appears in brackets, and the language added appears in italics:

"XXXII

"Opposition to Discharge or Composition *or Extension.*

"A creditor opposing [the] *an* application [of a bankrupt] for [his] discharge, or for the confirma-

> tion of a composition *or extension proposal,* shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall *at the same time* file a specification in writing of the grounds of his opposition [within ten days thereafter, unless the time shall be enlarged by special order of the judge]."

The sole question in this case is whether this amendment puts it altogether beyond the power of the Bankruptcy Court to grant an extension of time within which a creditor opposing discharge may file his written specifications of the grounds of his opposition, where such creditor duly appears on the return day, objects to the discharge, and shows good cause for such an extension.

## Summary and Short Statement of the Matter Involved.

In this bankruptcy proceeding an order had been duly entered requiring creditors to show cause on a day certain why a discharge should not be granted to the present respondents. On that day this petitioner duly appeared by counsel, as a creditor objecting to the discharge. On such appearance, counsel for petitioner represented to the court that the grounds of opposition had but recently come to light; that the charges against bankrupts were so serious that authorization for filing written specifications should first be given by the President of petitioner, who had just left the hospital where he had undergone a serious operation (R. 94-95). On this statement, the court granted an extension of time until noon the next day for the filing of the specifications. They were duly filed within such extended period (R. 91), and contained grave charges of wilful fraud and violations of the bankruptcy act by respondents, both prior to and in the bankruptcy proceedings (R. 28-40).

Thereafter, on motion of bankrupts, the court disregarded the specifications on the sole ground that they were filed beyond the time provided by amended General Order

XXXII, the court taking the view that that amendment must have been intended to put it beyond the power of the bankruptcy court to grant any extension of time whatever for the filing of the written specifications. The District Court's opinion (R. 97-98) admits that "It may be that bankrupts not entitled by substantive law to win a discharge will get one because of the speed in procedure required of creditors under the new rule. That is a matter that the district court cannot take into account."

The Circuit Court of Appeals affirmed. It agreed that "we have what appears to have been good and sufficient cause for granting an extension of one day for the filing of such specifications and the question of power to grant any extension is squarely presented" (R. ). The decision is based solely and squarely upon the view that, by deleting from General Order XXXII the provision "unless the time shall be enlarged by special order of the judge", and by inserting the requirement that the specifications shall be filed on the return day, this Court must necessarily have intended to put it beyond the power of the bankruptcy court to grant any extension whatever.

## Reasons Relied on for the Allowance of the Writ.

(1) *The decision of the Circuit Court of Appeals, Second Circuit, in this case is in direct conflict with a decision of the Circuit Court of Appeals, Seventh Circuit, on the same matter, and is inconsistent with a decision of the District Court of the United States for the Southern District of California, which the Circuit Court of Appeals, Ninth Circuit, and this Court, successively refused to review.*

The decision in the instant case is in direct conflict with the decision in *In re Lerner*, 70 F. (2) 938 (C. C. A. 7, May 8, 1934). In that case creditors appeared on the return

day, made formal, oral objection to discharge, and requested and received a ten day extension of time within which to file their written specifications of objection. To the subsequent contention of the bankrupt that amended General Order XXXII denied to the court all power to grant an extension of time for the filing of specifications, the Circuit Court of Appeals answered that it could not believe that the amendment was intended to take away from the bankruptcy courts, which are courts of equity, all power to allow extensions of time or to permit amendment of pleadings, on good cause shown; that objections and specifications are pleadings, and the latter are "merely elaborations" of the former; that, as pleadings, they are subject to the usual rule as to the discretion of the trial judge as to extensions and amendments; that the purpose of the amendment of General Order XXXII could be accomplished by requiring statement of objection on the return day, but without taking from the court the power to allow an extension for the filing of the written specifications. "We cannot believe" said the Circuit Court of Appeals "that the order was intended to take away from the District Court all discretion in matters that are primarily those of pleading."

In *McIntosh* v. *Seymour*, certiorari denied June 4, 1934 (292 U. S. 652), the District Court allowed a trustee, who had not even appeared on the return day, to file specifications in opposition to discharge seventeen days after the return day had passed; and, for good cause shown, it overruled a motion by the bankrupt, based on amended General Order XXXII, to dismiss them. The Circuit Court of Appeals for the Ninth Circuit, exercising its discretion under section 24(b) of the Bankruptcy Act, refused to allow an appeal from the order overruling the motion. This Court denied the bankrupt's petition for writ of certiorari. An inspection of the petition for writ of certiorari and of the supporting and opposing briefs in that case discloses that the basis of the petition was the contention that under amended General Order XXXII the District Court

was powerless to consider the specifications presented out of time; while the respondent asserted that the amended order did not withdraw from the bankruptcy court its inherent and statutory powers to grant extensions or to relieve defaults.[1]

(2) *The misconstruction of amended General Order XXXII by the Circuit Court of Appeals arises from its failure to consider public documents which afford a reason for the amendment and indicate that its purpose was other than that attributed to it below.*

Both the District Court and the Circuit Court of Appeals in this case felt compelled to reach their conclusions by the mere fact that the amendment strikes out the clause giving the judge express power to shorten or enlarge the time for the filing of specifications. They conclude that the dropping of the clause was deliberate, and was intended to accomplish speed at the expense of flexibility (R., 97, ). In so concluding the courts below have overlooked the fact that the amendment also changes the *normal time* when specifications are to be filed. We believe that this is highly significant, and that the real purpose of the amendment was to delete the provision giving the creditor ten days after appearance in which, *as of right,* to file specifications.

---

[1] No. 998, October Term, 1933. The petition claimed conflict with *In re Corcoran,* 4 Fed. Supp. 988 (DCUS Mass.) and *In re Hodges,* 4 Fed. Supp. 804 (DCUS Conn.), affirmed, *sub nom. United Wall Paper Factories* v. *Hodges,* 70 F. (2) 243 (CCA 2, April 2, 1934). There was, however, no conflict of Circuit Court of Appeals decisions at that time. The Circuit Court of Appeals in the *Hodges* cases had ruled no more than that, after the amendment of General Order XXXII, the District Court had no power to releive a default in filing specifications *without good cause shown.* Judge Learned Hand in that case reserved the question whether "there may be excuses for failing to comply". The Circuit Court of Appeals for the Second Circuit, sitting without him in this case, has now decided that there are none. The denial of certiorari by this Court in the *McIntosh* case may well have been in the view that a ruling that there was good ground for excusing the default in that case (a point pressed by the respondent there) did not conflict with the ruling of the Circuit Court of Appeals in the Second Circuit in the *Hodges* case. It is possible, of course, that this Court doubted its jurisdiction to issue a writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit in the *McIntosh* case, since the decision of that court in that case had been merely a discretionary refusal to allow an appeal. *Cf. Ferguson* v. *District of Columbia,* 270 U. S. 633, 634.

The omission of an express grant of power to the judge to enlarge that time is explainable upon the ground that it was thought to be unnecessary.

Support for this view of the amendment is not lacking. In framing the 1933 amendments and additions to the General Orders in Bankruptcy, this Court undoubtedly had before it, inter alia, the Attorney General's Report on Bankruptcy Law and Practice (Senate Document No. 65, 72d Congress, 1st session) and the "Donovan" Report on the Administration of Bankrupt Estates (House Committee Print, 71st Congress, 3d session). Both of these reports show that, under General Order XXXII as it stood before the amendment, unscrupulous creditors were using the 10 day period, given them *as of right* within which to file specifications in opposition to discharge, in order to force bankrupts to "buy off" the opposition to discharge.[2] It is this evil which we believe this Court set out to correct in amending General Order XXXII. We do not believe that the Court intended to restrict the power of the District Courts, *on good cause shown*, to grant enlargements or to relieve defaults. The provision for enlargement was

---

[2] The Donovan report, commenting upon General Order XXXII as it then stood, states: "An unscrupulous creditor who desires to get something more than the others may be tempted to file a notice of appearance (a simple 4-line document) at the time of the hearing on confirmation, knowing that this will hold up the entire proceeding for at least another 10 days even if he does not follow up the notice of appearance with detailed specifications of objection. During this 10-day period he may hope to get paid off by the bankrupt. If the bankrupt refuses or is unable to strike a bargain, the creditor may then file his specifications of objection, so that the bankrupt will face another three weeks' delay, during the process of which he may be finally induced to come to terms" (p. 116).

The Attorney General's report states: "The clerks of 72 district courts reported to us that, out of the 49,928 cases closed by them in the fiscal year 1930, 27,426 applications for discharge had been disposed of. In only 1,042 of these cases individual creditors at the time of the hearing before the judge on the bankrupt's application filed notices of appearance stating that they intended to oppose the discharge. Under General Order XXXII, these creditors were then required to file specifications in writing within 10 days, setting forth the grounds of this opposition, upon the filing of which the issues would be tried. But in 330 of these 1,042 cases the creditors did not follow up their notices of appearance by filing written specifications. Why? Presumably, because the creditors were either bought off by the bankrupt as already described, or became indifferent, or were unwilling to incur further expense . . ."

omitted because unnecessary. This view has been advanced by a standard text.[8]

To read the amended order as the courts below in this case have done is to fail to take into consideration a purpose which we regard as plain in the light of the evil pointed out in the Donovan Report and the Attorney General's Report. The language of the Order, as amended, does not require the conclusion that anything more was intended than to take away the *absolute right* of a creditor to a 10-day delay between objection and filing of specifications. The evil feared will not be fostered by reading the amended rule as permitting the judge, on good cause shown, to grant an extension. Here the Circuit Court of Appeals admits that there appears to be good and sufficient cause shown. The extension was for but a day. There is not a line in the record to indicate—and every circumstance repels—the inference that harm or evil could occur through the extension.

(3) *The decision below fails to take into consideration the provisions of other General Orders and of the Bankruptcy Act itself.*

We submit that the courts below erred in failing to read amended General Order XXXII in the light of the following:

---

[8] Remington on Bankruptcy, 4th Ed. Vol. 7, sec. 3201, p. 427 (1934): "Although the express permission of former General Order 32 that the time for filing specifications in opposition to the discharge might be shortened or enlarged by special order of the judge was eliminated when the Supreme Court amended the General Order in 1933, yet it cannot rightly be inferred from such change that the general power of courts to grant extension of time in remedial matters is in this particular abrogated; indeed, the retention of the requirement that appearance in opposition must be entered in writing on the return day, while, at the same time, it is prescribed that specifications in writing are to be filed also on the return day, would carry the necessary implication that, on occasion, an extension of time to file the specifications might be granted; otherwise there would not be the double requirement of the entry of appearance on the return day and of the filing of the specifications on the same day, since the specifications themselves would constitute the most positive form of entry of appearance in opposition. *Perhaps the expressing of the power to grant such extension was eliminated precisely because unnecessary.*"

Sec. 14(b), Bankruptcy Act: "the judge shall hear the application for a discharge and such proofs and pleas as may be made in opposition thereto by the trustee or other parties in interest, at such time as will give the trustee or parties in interest a reasonable opportunity to be fully heard; and investigate the merits of the application and discharge the applicant, unless he has" committed stated offenses.

Bankruptcy Act, sec. 2(15) gives the bankruptcy courts power to "make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act".

Bankruptcy Act, sec. 2: "Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated."

General Order XXXVII: "In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the practice and procedure in cases at law shall be followed as nearly as may be. But the judge may, by special order *in any case,* vary the time allowed for return of process, for appearance and pleading . . ."

(4) *The decision below is a narrow construction of the General Order, not warranted by its terms or history.*

Prior to the 1933 amendment, it was uniformly held that the bankruptcy court had the power to grant extensions of time to file specifications.

*In re Brecher,* 4 F. (2) 1001 (C. C. A. 2nd, 1925);
*Rerat* v. *Fisk Tire, Inc.,* 28 F. (2) 607 (C. C. A. 5th, 1928);
*Schlesinger* v. *Phillips,* 36 F. (2) 191 (C. C. A. 5th, 1929);
*In re Stiebel & Sons,* 40 F. (2) 637 (C. C. A. 6th, 1930);

*In re Levin,* 176 Fed. 177 (C. C. A. 1st, 1910);
*In re Nathanson,* 152 Fed. 585 (D. C. S. D. N. Y., 1907);
*In re Morgan,* 101 Fed. 982 (D. C. W. D. Ark., 1900).

The language of General Order XXXII, as now amended, does not expressly deprive the bankruptcy court of such power. The decisions below are based solely upon the omission of the granting clause. We submit that the power to grant extensions of time to file pleadings, or to amend them, is inherent in any court, except where statutes forbid. The reason for the change in 1933 in this general order which is advanced herein, supra, we believe to be sound. We further believe that had this Court intended to prevent extensions, even on good cause shown, it would have said so expressly. We cannot believe that this Court intended by the amendment to set "springes" for court or counsel (cf. *Davis* v. *Wechsler,* 263 U. S. 22, 24); or that a Court which has so recently taken a liberal and enlightened attitude with respect to the right of litigants to amendment of pleadings generally (*United States* v. *Memphis Cotton Oil Co.,* 288 U. S. 62, 68; *United States* v. *Factors & Finance Co.,* 288 U. S. 89, 93), and which has, in another field, decried the framing of inflexible "standards of behavior that amount to rule of law" (*Pokora* v. *Wabash Ry. Co.,* 292 U. S. 98, 105), could have intended so to amend this General Order as to defeat the power to grant a clearly reasonable extension on the facts of this case, and so, possibly, to defeat the ends of justice.

(5) *We desire to preserve, although we think it will not be necessary, the contention which we raised below that if the General Order in question be construed as the court below has construed it then it is in contravention of the Bankruptcy Act and beyond the power of this Court.*

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of

this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case entitled on its docket:

In the Matter
*of*
William Reichert and Paul Kollmar, individually and as co-partners trading under the name of W. Reichert & Co.,
Bankrupts,
Lawyers County Trust Company,
Appellant.

and that the decree of the said United States Circuit Court of Appeals for the Second Circuit may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

Lawyers County Trust Company,
*Petitioner,*

By Howard Myers,
Joseph K. Guerin,
Saul S. Myers,
*Counsel for Petitioner.*